IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 29 of 2007

Date of decision : 25.1.2007

State of Haryana & others,

.....Appellants

through Mr.Randhir Singh, Addl.A.G.Haryana

v.

Balwant Singh,

.....Respondent

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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The State of Haryana impugns the order, passed by the learned Single Judge, dated 4.8.2006, whereby the order, dated 15.7.2002, retiring the respondent from service, was set aside, and the respondent was directed to be reinstated with all consequential benefits.

The respondent was appointed as a driver in the Haryana Roadways and served as such for more than 15 years. He met with an

accident, while on duty, and suffered multiple injuries, which restricted movement of his left ankle joint and led to a loss of the heel pad of right foot. As the respondent was permanently disabled, he was assigned the duty of Yard Master in November 2000 in his own pay scale. Vide report, dated 20.6.2002, a medical board of the PGIMS, Rohtak held the respondent permanently incapable of further service in the department as a driver. The petitioner was retired from service, vide order dated 15.7.2002, on the basis of the aforementioned report.

Aggrieved by the aforementioned order, the respondent filed CWP No.5942 of 2003, praying therein that in view of the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred as "the Act"), his services could not be dispensed with and he should, therefore, have been shifted to some other post in the same pay scale.

The appellants contested the respondent's claim by placing reliance upon a notification, dated 27.6.2005, issued by the State of Haryana, exempting the post of drivers and conductors in the Haryana Roadways from the operation of Section 47 of the Act.

The learned Single Judge, placing reliance upon a Division Bench judgment of this Court, in Gian Chand v. State of Haryana and others, CWP No.18916 of 2004, decided on 15.12.2005, held that the notification was prospective in operation, and as the respondent's services had been dispensed with, vide order dated 15.7.2002, the said notification was inapplicable. Consequently, the writ petition was allowed and the respondent was reinstated in service with all consequential benefits.

Counsel for the appellants contends that the Hon'ble Supreme

Court in Anand Bihari & others v. Rajasthan State Road Transport Corporation, Jaipur & others, (1991) 1 SCC 731, held that where a Department does not have an alternative job available, the employee should be suitably compensated and Courts cannot insist on his reinstatement.

Counsel for the respondent contends that the aforementioned judgment was rendered prior to the coming into force of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and, therefore, is not applicable.

We have heard learned counsel for the appellants and perused the paper book.

The contentions, raised by counsel for the appellants, cannot be accepted. The judgment in Anand Bihari & others's case (supra) was rendered prior to the coming into force of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The said Act came into force in 1996. Obligations, set out in Section 47 of the Act, are mandatory, except where the Government, by way of a notification, specifically directs that it would not apply to a specific department. In the present case, the learned Single Judge, while relying upon a Division Bench judgment of this Court in Gian Chand's case (supra), rightly held that though the State of Haryana has issued a notification exempting the posts of drivers and conductors in the Haryana Roadways from the operation of Section 47 of the Act, the said notification, being prospective in operation, was not applicable to the respondent's case. The notification was issued on 27.6.2005 and was prospective in operation. The respondent was retired on 15.7.2002. We find no illegality or infirmity in the view, taken by the learned Single Judge. Consequently, this Letters

Patent Appeal is dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

January 25, 2007.
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